

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Michael Guernsey	)	File No.: EB-FIELDNER-14-00014398
	)	NAL/Acct. No.: 201432360001
Licensee of Amateur Radio Station KZ8O	)	FRN: 0009895590
Parchment, Michigan	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: July 22, 2014**

**Released: July 22, 2014**

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We propose a penalty of \$22,000 against amateur radio station operator Michael Guernsey for intentionally causing interference to other amateur radio operators and failing to provide station identification. Amateur radio frequencies are shared and licensees may not monopolize any frequency for their exclusive use. Deliberate interference undermines the utility of the Amateur Radio Service by preventing communications among licensed users that comply with the Commission's rules. In addition, the failure to transmit call sign information disrupts the orderly administration of the Amateur Radio Service by preventing licensed users from identifying a transmission's source. Mr. Guernsey has been repeatedly warned in writing by the Enforcement Bureau about causing interference to other amateur radio operators. This history of noncompliance, combined with Mr. Guernsey's deliberate disregard for Commission authority, warrants a significantly increased penalty.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Mr. Guernsey, licensee of Amateur Radio Station KZ8O in Parchment, Michigan, apparently willfully violated Section 333 of the Communications Act of 1934, as amended (Act), and Sections 97.101(d) and 97.119(a) of the Commission's rules (Rules) by causing intentional interference to licensed radio operations and failing to transmit his assigned call sign in the Amateur Radio Service.<sup>1</sup>

**II. BACKGROUND**

3. Mr. Guernsey has a long history causing interference to the communications of other amateur radio operators and has been warned repeatedly in writing by the Enforcement Bureau that his actions violate the Rules.<sup>2</sup> On March 7, 2014, in response to several complaints of intentional interference

<sup>1</sup> 47 U.S.C. § 333, 47 C.F.R. §§ 97.101(d), 97.119(a).

<sup>2</sup> See Letter from Laura Smith, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Dec. 10, 2012) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (May 9, 2003) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (May 20, 2002) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Dec. 6, 2001) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Nov. 14, 2000) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Oct. 17, 2000) (on file in EB-FIELDNER-14-00014398); Letter from W. Riley

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from amateur licensees operating on the frequency 14.313 MHz, agents from the Enforcement Bureau's Detroit Office (Detroit Office) used mobile direction finding techniques to identify the source of the transmissions to 2026 Travis Road, Parchment, Michigan, the address of record for Mr. Guernsey's amateur station KZ8O. The agents monitored the transmissions emanating from Mr. Guernsey's station for approximately 40 minutes and heard him transmit a prerecorded song and various animal noises on the frequency.<sup>3</sup> These transmissions prevented other amateur licensees from communicating over the frequency. During the monitoring period, the agents did not hear Mr. Guernsey transmit his assigned call sign.

### III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>4</sup> Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>5</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>6</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>7</sup>

#### A. Causing Intentional Interference to Licensed Communications

5. The evidence in this case is sufficient to establish that Mr. Guernsey violated Section 333 of the Act and Section 97.101(d) of the Rules. Section 333 of the Act states that "[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under the Act or operated by the United States Government."<sup>8</sup> The legislative history for Section 333 of the Act identifies willful and malicious interference as "intentional jamming, deliberate transmission on top of the transmissions of authorized users already using specific frequencies in order to obstruct their communications, repeated interruptions, and the use and transmission of whistles, tapes, records, or other types of noisemaking devices to interfere with the communications or radio signals of

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Hollingsworth, Esq., Special Counsel, Enforcement Bureau, Federal Communications Commission, to Michael Guernsey (Nov. 4, 1998).

<sup>3</sup> The Commission's High Frequency Direction Finding Center, using long range direction finding techniques, also traced the source of the transmissions to an area containing Mr. Guernsey's station.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 U.S.C. § 312(f)(1).

<sup>6</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law . . . . The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms . . . .").

<sup>7</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>8</sup> 47 U.S.C. § 333.

other stations.”<sup>9</sup> Section 97.101(d) of the Rules states that “[n]o amateur operator shall willfully or maliciously interfere with or cause interference to any radio communication or signal.”<sup>10</sup>

6. On March 7, 2014, agents from the Detroit Office located the source of interference to frequency 14.313 MHz to the address of record for Mr. Guernsey’s amateur station KZ8O. The agents heard Mr. Guernsey intentionally interfering with other amateur licensees by transmitting a prerecorded song and various animal noises. These transmissions were a deliberate act to monopolize the frequency and prevent other amateur radio operators from conducting legitimate communications.<sup>11</sup> Based on the evidence before us, we find that Mr. Guernsey apparently willfully violated Section 333 of the Act and Section 97.101(d) of the Rules by intentionally interfering with other licensed amateur radio communications.

### **B. Failure to Transmit a Call Sign Identification**

7. The evidence in this case also is sufficient to establish that Mr. Guernsey violated Section 97.119(a) of the Rules. Section 97.119(a) of the Rules states that “[e]ach amateur station . . . must transmit its assigned call sign on its transmitting channel at the end of each communication, and at least every 10 minutes during a communication, for the purpose of clearly making the source of the transmissions from the station known to those receiving the transmissions.”<sup>12</sup> On March 7, 2014, agents from the Detroit Office monitored frequency 14.313 MHz for approximately 40 minutes and heard transmissions by Mr. Guernsey in which he failed to transmit his assigned call sign. Based on the evidence before us, we find that Mr. Guernsey apparently willfully violated Section 97.119(a) of the Rules by failing to transmit his assigned call sign.

### **C. Proposed Forfeiture**

8. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for interference is \$7,000 and the base forfeiture amount for failure to provide station identification is \$1,000.<sup>13</sup> We retain the discretion, however, to issue a higher or lower forfeiture than provided in the *Forfeiture Policy Statement* or to apply alternative or additional sanctions as permitted by statute, subject to the statutory cap.<sup>14</sup> In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>15</sup>

9. The fact that Mr. Guernsey intentionally interfered with other amateur licensees despite multiple written warnings from the Enforcement Bureau that such action violated the Act and Rules

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<sup>9</sup> H.R. Rep. No. 101-316, at 8 (1989).

<sup>10</sup> 47 C.F.R. § 97.101(d). See 47 C.F.R. § 97.101(a) (stating that “each amateur radio station must be operated in accordance with good engineering and good amateur practice”).

<sup>11</sup> Specifically, evidence indicates that the transmissions were aimed at interfering with two amateur radio operators with whom Mr. Guernsey has had a longstanding and well-documented dispute.

<sup>12</sup> 47 C.F.R. § 97.119(a).

<sup>13</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>14</sup> 47 C.F.R. § 1.80(b)(8), Note (“The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by statute.”).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

demonstrates a deliberate disregard for the Commission's authority.<sup>16</sup> Thus, we find that a \$14,000 upward adjustment to the proposed forfeiture is warranted.<sup>17</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Guernsey is apparently liable for a total forfeiture in the amount of \$22,000. We caution Mr. Guernsey that future violations of this kind may result in significantly higher forfeitures or revocation of his amateur license.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Michael Guernsey is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-two thousand dollars (\$22,000) for violations of Section 333 of the Act and Sections 97.101(d) and 97.119(a) of the Rules.<sup>18</sup>

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Michael Guernsey **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Michael Guernsey shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>19</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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<sup>16</sup> See *supra* note 2.

<sup>17</sup> See, e.g., *Jack Gerritsen*, Notice of Apparent Liability for Forfeiture, File No. EB-03-LA-286 (Enf. Bur. Dec. 2, 2014), *aff'd*, Forfeiture Order, 20 FCC Rcd 19256 (Enf. Bur. 2005) (imposing \$14,000 upward adjustment to forfeiture for willful and malicious interference to licensed amateur radio stations where individual was repeatedly warned in writing that his actions violated the Rules).

<sup>18</sup> 47 U.S.C. §§ 333, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 97.101(d), 97.119(a).

<sup>19</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>20</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>21</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan 48335, and include the NAL/Acct. No. referenced in the caption. Michael Guernsey also shall e-mail the written response to NER-Response@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Michael Guernsey at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

James Bridgewater  
District Director  
Detroit Office  
Northeast Region  
Enforcement Bureau

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<sup>20</sup> See 47 C.F.R. § 1.1914.

<sup>21</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).